

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT

JESSICA A. SEALE

)

)

VS.

)

W.C.C. 00-01099

)

OAKLAND GROVE HEALTH CENTER)

DECISION

OLSSON, J. This matter is before the court on the employee's Original Petition in which she alleges that she sustained injuries to her right knee, right hip and back on November 12, 1999 during the course of her employment with the respondent which resulted in partial incapacity from November 12, 1999 to December 6, 1999 and total incapacity from December 7, 1999 and continuing. The petition was denied at the pretrial conference and the employee claimed a trial in a timely manner.

The parties stipulated that the employee's average weekly wage is Three Hundred Thirty-one and 43/100 (\$331.43) Dollars. Ms. Seale was employed by the respondent as a certified nursing assistant ("CNA"). Her duties included bathing, feeding, and dressing patients, some of whom required more assistance than others.

On November 12, 1999, the employee was assisting another CNA, Patricia Collins, with a patient when Michelle Cahill, the charge nurse, asked them both to assist Crystal Bettencourt, also a CNA, in getting a patient off of the toilet in another room. This particular patient weighed almost 400 pounds and was blind. When Ms. Seale entered the bathroom, the patient was upset

and crying. Ms. Cahill retrieved a belt that was used to pull the patient up. Ms. Seale testified that the belt was placed around the patient and she held the two (2) ends as she stood in front of the patient. Ms. Cahill was standing to the employee's right, holding onto the patient's left arm. They pulled and pushed the patient onto her feet but she was crying and said that her legs could not support her and she sat back down. They got her back up a second time, but she was upset and fell backwards to the floor on the left side of the toilet. Ms. Seale, who was still holding the ends of the belt, was abruptly pulled forward, although she did not fall to the floor.

As she was pulled forward, the employee felt pain behind her right knee. She informed Ms. Cahill immediately that her leg hurt and then told her again later that day. She completed her shift and went home. The following day, she experienced pain shooting from her knee up to her right hip and low back when she was walking. She completed an incident report for the employer that day and went to the emergency room at Landmark Medical Center where she was given a brace and crutches. She was referred to the Occupational Medicine Department for orthopedic consultation and physical therapy. Eventually she sought a second opinion from Dr. Tarek Wehbe who referred her to Dr. Joseph Lifrak, an orthopedic surgeon. Dr. Lifrak did arthroscopic surgery on her right knee in May 2000.

After the incident, Ms. Seale worked in a light duty job for the employer for several weeks. She stopped working in December 2000 because she had numbness in her right foot and was in a lot of pain. She has not worked anywhere since that time.

A copy of the incident report was admitted into evidence. The report is dated November 12, 1999 by the employee and states that she felt a pull in the back of her knee when she was lowering a patient to the floor. She wrote that she did not think it was significant until it began to swell later in the day. The second page of the report contains information obtained from Ms.

Bettencourt and Ms. Cahill regarding the incident. Interestingly, the first sentence of the two (2) statements is identical. The statements state that they lowered the patient to the floor and they were the only two (2) people involved in doing that activity. Ms. Cahill did indicate that the employee complained of right knee pain during her shift.

Michelle Cahill, the employee's supervisor at the time of the incident, testified that Ms. Bettencourt called her to the patient's room to assist her in moving the patient from the bathroom. Ms. Cahill stated that she and Ms. Bettencourt attempted to get the patient off of the toilet using the gait belt, but they could not get her into the wheelchair so they lowered her to the floor. She then retrieved a Hoyer lift, which is an apparatus on wheels with a canvas seat. The seat is slid under the patient and a crank is used to raise the patient in the seat. Ms. Cahill stated that she did not recall whether the employee assisted with this maneuver nor did she recall whether the employee complained of right knee pain that day. The witness indicated that she found out the next day that Ms. Seale was making a workers' compensation claim because she was asked to give a statement.

Ms. Cahill stated that she did ask the employee and Ms. Collins to assist in getting the patient off of the floor, but then she could not recall what the employee did while they maneuvered the canvas seat under the patient and lifted her off of the floor. However, she was adamant that the employee did not help them roll the patient onto the seat, nor was she involved in lifting the patient off of the toilet and guiding her to the floor.

Crystal Bettencourt, a certified nurses' assistant, testified that she recalled that there was an incident with this particular patient, but she could not remember any of the details. She acknowledged that she wrote the witness statement on the incident report. She asserted that she and Ms. Cahill lowered the patient to the floor and Ms. Seale was not involved in that activity.

Ms. Bettencourt stated that the employee did assist in getting the patient onto the canvas seat or pad so they could raise her with the lift. After the patient was returned to her room, Ms. Seale told Ms. Bettencourt that her knee hurt and Ms. Bettencourt told her to go tell someone.

The medical evidence consists of the records of Landmark Medical Center, the records of Dr. Joseph T. Lifrak, the deposition and records of Dr. Tarek Wehbe, and the deposition and records of Dr. Justin Greisberg. The hospital records reflect that the employee complained of low back pain on June 16, 1999, six (6) months prior to the alleged incident at work, and told hospital personnel at that time that her back “locks up” every couple of months.

Ms. Seale was seen at the hospital on November 13, 1999 complaining of right leg pain, which began after helping to move a patient the night before at work. She had tenderness, limited range of motion, and an effusion of the right knee. The diagnosis was a right knee sprain and she was given a knee immobilizer, crutches, and medication. She was also referred for physical therapy. She was advised that she could only work sitting down.

The employee was seen at the hospital on four (4) more occasions. Her complaints focused on the right knee and right leg; there was no mention of back or hip pain.

On December 10, 1999, Ms. Seale saw Dr. Wehbe, an internist, and told him that she was injured while moving a patient on November 12, 1999. She complained of pain in the right knee, right calf, and right buttocks, and numbness. The doctor noted that she had tenderness in her right hip and right knee and that the knee was swollen. His diagnosis was right hip pain and right knee pain. He prescribed medication and scheduled an MRI of the right knee. The test was done on December 15, 1999 and revealed a slight irregularity involving the posterior horn of the medial meniscus which could indicate a small tear.

On December 20, 1999, Ms. Seale reported that her pain was the same, but she also had low back pain, primarily on the right side. Dr. Wehbe indicated he was sending her to another doctor for evaluation. He advised her to stay out of work. When the pain in the knee, back, and hip persisted, the employee underwent an MRI of the lumbar spine. This test revealed only mild lower lumbar disc disease with no focal disc herniation. A subsequent x-ray of the right hip was normal. Dr. Wehbe did not see the employee for about five (5) months while she was treating with an orthopedic surgeon for her right knee. When she returned in July 2000, he saw her about once a month. She continued to have the same general complaints of pain in the right knee, right hip and low back.

Dr. Wehbe testified that in his opinion, based upon the history he received from the employee, the right knee, right hip, and low back problems were all caused by the incident at work on November 12, 1999. He concluded that she was not able to perform her duties as a certified nursing assistant during any of the time that he was treating her.

Dr. Lifrak, an orthopedic surgeon, evaluated the employee for the first time on February 10, 2000. Her chief complaint was right leg pain, primarily around the knee. He diagnosed arthrofibrosis of the right knee, a possible right medial meniscal posterior horn tear, and a back strain. He recommended aggressive physical therapy directed at strengthening the knee and leg. In his report, he attributed the hip and back pain to limping and walking awkwardly while wearing the knee immobilizer for the past three (3) months. When Ms. Seale returned on March 16, 2000, she reported almost 100% improvement, noting that she had only occasional pain behind her knee. The doctor advised her to continue the therapy for another six (6) weeks. He also indicated that she should not be working due to her back pain.

The employee continued to complain of pain in the knee, more towards the front of the knee, especially with squatting and climbing stairs. Dr. Lifrak recommended arthroscopic surgery with a partial medial meniscectomy, which he performed in May 2000. On June 22, 2000, the employee reported that she was improved, but now had pain behind the knee again with squatting and bending. She also noted weakness in her quadriceps, which was confirmed by the physical therapist. Dr. Lifrak referred her for physical therapy to strengthen her quadriceps and stated that she could perform activities as tolerated.

Dr. Lifrak apparently moved and the employee was examined by Dr. Justin Greisberg from the same office on August 24, 2000. Ms. Seale informed the doctor that she was unable to participate in physical therapy since the surgery due to transportation problems. She continued to have weakness in her quadriceps and he recommended physical therapy, which she indicated she was now able to attend.

Dr. Greisberg testified that the employee's right knee condition was the result of the incident at work. He noted that there was no history of any prior knee problems, the tear was the result of acute trauma and not a degenerative tear, and the incident at work was the only injury of any type that the employee had suffered at the time she began to experience knee pain. He acknowledged that the low back condition was a more difficult issue because of the lack of objective findings, but based upon the history provided by the employee and the lack of any report of prior back problems, he attributed that condition to the incident at work as well.

The doctor stated that when he saw Ms. Seale in August 2000, she was not able to return to her regular duties because of the weak leg muscles and back pain. Subsequent visits in October 2000 and January 2001 focused more on the employee's complaints of persistent back pain which was interfering with her daily activities. The doctor indicated that as of October 27,

2000, the employee's knee problem had resolved to the point that she was capable of resuming her employment as a CNA, but her low back problem prevented her from doing that type of work. He recommended aquatherapy for her low back.

Dr. Greisberg testified that his opinion as to the cause of the employee's low back problem was based upon his assumption that she experienced pain in her low back immediately following the incident at work. He indicated that if the back complaints did not arise until a week or two (2) after the incident, then the condition would likely not be related to that incident. It was also his understanding that the employee did not have any prior back problems.

After careful consideration of all of the evidence which has been presented in this matter, I find that the employee has established that she sustained an injury to her right knee during the course of her employment with the respondent which resulted in a period of partial incapacity from November 13, 1999 through October 27, 2000.

The employer's defense of this petition rested on the testimony of Ms. Cahill and Ms. Bettencourt. However, I found their testimony to be less than credible. Ms. Cahill stated that the patient was already on the floor when Ms. Seale came into the bathroom. Although Ms. Cahill remembered going across the hall to request help from Ms. Seale and Ms. Collins, she could not recall what Ms. Seale did or where she was in the bathroom after that point. The only thing she claimed to recall was that Ms. Seale did not assist in lifting the patient off of the toilet or off of the floor. It seems unclear then why Ms. Seale was even called in to assist because according to Ms. Cahill, she and Ms. Bettencourt apparently did everything. Although this was a rather traumatic event, Ms. Cahill had a very limited memory of what exactly went on in the bathroom and who was involved.

Ms. Bettencourt started off her testimony with the statement that she recalled there was an incident in the bathroom involving this patient, but she could not recall any details about the event. However, Ms. Bettencourt did remember that Ms. Seale assisted in getting the pad of the Hoyer lift under the patient, in contradiction to the assertion of Ms. Cahill that the employee did not do anything. Ms. Bettencourt also stated that she wrote what she remembered of the incident on the incident report. It is quite a coincidence that the statement she wrote and the statement written by Ms. Cahill contain the exact same wording, even to the point of using the number “2” instead of the word “two.”

The contradictions between the two (2) witnesses, their lack of memory of certain things while vividly recalling other facts, and the odd coincidence of their witness statements, leads me to question the truthfulness of their testimony. I question whether they attempted to discredit the employee’s version of events because they had concerns that the incident would be investigated when it was discovered that a patient may have fallen to the floor.

Further tipping the balance in the employee’s favor are the facts that both Ms. Cahill and Ms. Bettencourt did recall Ms. Seale complaining about her knee at some point on the day of the incident in the bathroom. Ms. Seale filed an incident report and sought medical treatment within twenty-four (24) hours. She provided the same history to each of the medical providers. During her testimony, the employee provided many details about the entire incident and her involvement in each step. In particular, she described the two (2) attempts to stand the patient up from the toilet during which she was assisted by Ms. Cahill and Ms. Bettencourt. I find it difficult to believe that Ms. Seale could provide such detail if in fact she was never present during these attempts, as Ms. Cahill testified.

Weighing all of the above factors, I find the testimony of Ms. Seale to be credible and the statements of the employer's witnesses to be lacking in truthfulness. Dr. Wehbe and Dr. Greisberg both testified that the problem with the right knee was the result of the incident at work. Based upon the medical evidence which was submitted, the employee was not able to return to her regular job immediately following the injury, although she did work for a period of time in a light duty position for the employer. Although her condition seemed to fluctuate at times, she ultimately had surgery on the knee in May 2000. Dr. Greisberg testified that as of October 27, 2000, the employee was capable of returning to her regular job based upon the condition of her right knee.

The employee also alleged that she injured her back and right hip during the incident at work. The hospital records reflect only right knee complaints or lower leg complaints until December 2, 1999 when the employee states that she has pain from her toes up to her hip. At the first visit to Dr. Wehbe on December 10, 1999, the employee mentions pain in her right buttocks, but the first note to specifically mention the low back is dated January 10, 2000. Dr. Wehbe stated that the right hip and low back pain was due to the incident at work. Dr. Greisberg was a bit more circumspect about relating the low back problem, acknowledging that the employee did not have any positive objective findings.

I find their statements regarding the cause of the low back problem to be unpersuasive. Neither physician was aware that only five (5) months before the incident at work, the employee was at the hospital emergency room complaining of low back pain which she stated occurred every few months. In addition, there were no early reports of low back pain to any medical provider. Dr. Greisberg stated that he had assumed that Ms. Seale had complained of back pain immediately following the incident, rather than almost a month later. He testified that if the back

complaints were not reported until almost a month after the incident, then that condition was most likely not caused by the incident at work. Consequently, I do not find the opinions of Dr. Wehbe or Dr. Greisberg to be persuasive on the issue of whether the employee also sustained injuries to her right hip and back as a result of the incident on November 12, 1999.

I have limited the period of partial incapacity because as of October 27, 2000, Dr. Greisberg stated that the only reason the employee could not return to work was due to her low back problems, not due to her right knee. Thereafter, the focus of his treatment was the low back.

I, therefore, find as a fact:

1. That the employee sustained a personal injury, a right medial meniscus posterior horn tear, on November 12, 1999 arising out of and in the course of her employment with the respondent, connected therewith and referable thereto, of which the employer had knowledge.

2. That the employee's average weekly wage is Three Hundred Thirty-one and 43/100 (\$331.43) Dollars.

3. That the employee has one (1) dependent child, Damian Girouard (D/O/B: 7/31/95).

4. That the employee received some benefits from the Department of Human Services.

5. That the employee was partially disabled from November 13, 1999 through October 27, 2000 due to the injury to her right knee.

It is, therefore, ordered:

1. That the employer shall pay to the employee weekly benefits for partial incapacity from November 13, 1999 through October 27, 2000.

2. That the employer shall reimburse the Department of Human Services for those benefits received by the employee during the period of incapacity and shall take credit in that amount against any weekly benefits owed to the employee.

3. That the employee shall report any wages earned during the period of partial incapacity to the employer or its insurer so that the proper amount of weekly compensation may be computed.

4. That the employer shall pay all reasonable charges for medical services rendered to the employee in order to cure, rehabilitate or relieve the employee from the effects of the work-related injury to her right knee.

5. That the employer shall reimburse the employee's attorney the sum of Six Hundred and 00/100 (\$600.00) Dollars for the witness fees paid to Dr. Tarek Wehbe and Dr. Justin Greisberg.

6. That the employer shall reimburse the employee's attorney for the cost of taking the depositions of Michelle Cahill, Dr. Tarek Wehbe and Dr. Justin Greisberg upon presentation of sufficient proof of the amount and payment of that expense.

7. That the employer shall reimburse the employee's attorney the sum of One Hundred Twelve and 00/100 (\$112.00) Dollars for the cost of service of the subpoenas issued to Michelle Cahill and Crystal Bettencourt, the witness fees paid to those individuals, and the filing fee.

8. That the employer shall pay a counsel fee in the amount of Four Thousand Two Hundred and 00/100 (\$4,200.00) Dollars to Marc B. Gursky, Esq., attorney for the employee.

In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, a decree, a copy of which is enclosed, shall be entered on
at

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT

JESSICA A. SEALE

)

)

VS.

)

W.C.C. 00-01099

)

OAKLAND GROVE HEALTH CENTER)

DECREE

This cause came on for trial and upon trial thereon and in consideration thereof, the following findings of fact are made:

1. That the employee sustained a personal injury, a right medial meniscus posterior horn tear, on November 12, 1999 arising out of and in the course of her employment with the respondent, connected therewith and referable thereto, of which the employer had knowledge.

2. That the employee's average weekly wage is Three Hundred Thirty-one and 43/100 (\$331.43) Dollars.

3. That the employee has one (1) dependent child, Damian Girouard (D/O/B: 7/31/95).

4. That the employee received some benefits from the Department of Human Services.

5. That the employee was partially disabled from November 13, 1999 through October 27, 2000 due to the injury to her right knee.

It is, therefore, ordered:

1. That the employer shall pay to the employee weekly benefits for partial incapacity from November 13, 1999 through October 27, 2000.

2. That the employer shall reimburse the Department of Human Services for those benefits received by the employee during the period of incapacity and shall take credit in that amount against any weekly benefits owed to the employee.

3. That the employee shall report any wages earned during the period of partial incapacity to the employer or its insurer so that the proper amount of weekly compensation may be computed.

4. That the employer shall pay all reasonable charges for medical services rendered to the employee in order to cure, rehabilitate or relieve the employee from the effects of the work-related injury to her right knee.

5. That the employer shall reimburse the employee's attorney the sum of Six Hundred and 00/100 (\$600.00) Dollars for the witness fees paid to Dr. Tarek Wehbe and Dr. Justin Greisberg.

6. That the employer shall reimburse the employee's attorney for the cost of taking the depositions of Michelle Cahill, Dr. Tarek Wehbe and Dr. Justin Greisberg upon presentation of sufficient proof of the amount and payment of that expense.

7. That the employer shall reimburse the employee's attorney the sum of One Hundred Twelve and 00/100 (\$112.00) Dollars for the cost of service of the subpoenas issued to Michelle Cahill and Crystal Bettencourt, the witness fees paid to those individuals, and the filing fee.

8. That the employer shall pay a counsel fee in the amount of Four Thousand Two Hundred and 00/100 (\$4,200.00) Dollars to Marc B. Gursky, Esq., attorney for the employee.

Entered as the decree of this Court this day of September, 2005.

ENTER:

PER ORDER:

Olsson, J.

John A. Sabatini, Administrator

I hereby certify that copies were mailed to Marc B. Gursky, Esq., and Michael T. Wallor,
Esq., on
